

**AGREEMENT FOR LEGAL SERVICES BETWEEN  
EL DORADO COUNTY AND EBBIN, MOSER & SKAGGS LLP**

This Agreement is made and entered into between EL DORADO COUNTY ("County"), a political subdivision of the State of California, and Ebbin, Moser & Skaggs LLP ("Attorney"), a limited liability partnership duly authorized to do business in the State of California, whose address is 550 Montgomery Street, Suite 900, San Francisco, California 94111, effective on the date set forth in Section 2, below, for the performance of specified legal services for County.

**WITNESSETH**

**WHEREAS**, County has determined that it is necessary to obtain legal services in connection with its preparation and adoption of an Integrated Natural Resources Management Plan; and

**WHEREAS**, Attorney has represented to County that it is specially trained, experienced, expert and competent to perform the special services required hereunder and County has determined to rely upon such representations; and

**WHEREAS**, it is the intent of the parties hereto that such services be in conformity with all applicable federal, state and local laws; and

**WHEREAS**, County has determined that the provision of these services provided by Attorney is in the public's best interest, and that these services are more economically and feasibly performed by outside independent contractors as well as authorized by El Dorado County Charter, Section 210(b)(6) and /or Government Code 31000;

**NOW, THEREFORE**, County and Attorney mutually agree as follows:

1. **Scope of Services.** County hereby retains Attorney, under the direction of County Counsel, to advise, assist, and represent the County on issues related to the Endangered Species Act, the California Endangered Species Act, and the eight endangered and/or threatened gabbro soils endemic plants. Upon request of County Counsel, Attorney shall provide such legal services as are needed. The precise nature of the work required may be affected over time as work progresses and more specific policy decisions are made by the Board of Supervisors. Work to be performed shall include, but is not necessarily limited to, that set forth in Exhibit "A" attached hereto and incorporated by this reference.

2. **Term.** This Agreement shall become effective when fully executed by both parties hereto and shall continue in effect until all services called for hereunder have been performed in accordance with the terms of this Agreement, or upon sooner termination pursuant to the terms of this Agreement.

3. **Schedule.** Attorney acknowledges that time is of the essence of this Agreement.

4. **Compensation for Services.** For services provided herein, County agrees to pay ATTORNEY the hourly rates set forth in Exhibit "A." Payment shall be made within thirty (30) days following County's receipt and approval of itemized invoice(s) detailing services rendered. The total amount of this Agreement shall not exceed Fifty Thousand Dollars (\$50,000.00), inclusive of all expenses.

Attorney shall submit to County for County Counsel's review and approval a confidential itemized statement of services rendered and costs incurred under this Agreement monthly. Such statement shall describe the nature of the services rendered, and specify the time expended in rendering such services, calculated in not more than one-quarter (.25) hour segments. Provided, however, that in Attorney's discretion, such statements need not be submitted until the total amount due exceeds Five Hundred Dollars (\$500.00). Attorney shall keep time records for a minimum period of three (3) years and make them available for review and internal audit by the County, and its authorized auditors.

5. **Attorney-Client Relationship.** Attorney agrees that it will comply with all ethical duties, will maintain the integrity of the attorney-client relationship, and will take all reasonable steps legally available to preserve all applicable legal privileges, confidences, and records from disclosure. All documents and information obtained by or generated by Attorney pursuant to this Agreement, all opinions and conclusions of Attorney, any reports, information, data, statistics, forms, procedures, systems, studies and all communications with County are confidential. Attorney agrees to take all steps reasonably necessary to maintain this confidentiality and to ensure that it and all of its employees faithfully adhere to the confidentiality requirements of law and this Agreement.

6. **Changes to Agreement.** This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

7. **Contractor to County.** It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further agreed that in all matters pertaining to this Agreement, Attorney shall act as contractor only to County and shall not act as contractor to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with Attorney's responsibilities to County during the term hereof.

8. **Assignment and Delegation.** Attorney is engaged by County for its unique qualifications and skills as well as those of its personnel. Attorney shall not subcontract, delegate or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County, which consent may be withheld without cause.

9. **Independent Contractor.** Attorney, and all persons who perform services for or through Attorney pursuant to this Agreement, are and shall be at all times, deemed independent contractors and shall be wholly responsible for the manner in which it performs services required

by terms of this Agreement. Attorney exclusively assumes responsibility for acts of its employees, associates and subcontractors, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment. Attorney's services shall be under the general direction of County Counsel's Office, which shall also be responsible for administering this Agreement.

**10. Fiscal Considerations.** The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment, or services not budgeted in a given year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products, or equipment subject herein. Such notice shall become effective upon the adoption of a final budget, which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce or order a reduction in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

**11. Standards of Performance.** Attorney and every employee thereof shall provide their services, advice and any reports in full compliance with all applicable law and professional standards. Attorney represents that it is specially trained, experienced, expert and competent to perform the services required under this Agreement, and that each individual providing legal services is a member in good standing of the State Bar and is licensed to practice in California. Attorney certifies that it will not accept representation in any matters under this Agreement if it or any employee thereof has any personal or financial interest therein. Attorney certifies that it accepts this retention because it has the time, energy, skills and ability necessary to perform the duties required in an efficient, trustworthy, professional and businesslike manner. It is understood that the services under this Agreement are time-critical and must be provided in a timely fashion.

**12. Insurance.** Attorney shall maintain insurance meeting the following requirements set forth herein in full force and effect from the first day of the term of this Agreement, and shall provide proof of a policy of insurance satisfactory to the El Dorado County Risk Manager of same:

A. Full Worker's Compensation and Employer's Liability Insurance covering all employees of Law Firm as required by law in the State of California.

B. Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.

C. Automobile liability insurance of not less than \$500,000 is required in the event motor vehicles are used by Attorney in the performance of the contract.

D. Professional liability (for example, malpractice insurance) covering services provided under this Agreement is required with a limit of liability not less than \$1,000,000 per occurrence.

E. Attorney shall furnish a certificate of insurance satisfactory to the El Dorado County Risk Manager as evidence that the insurance required above is being maintained.

F. The insurance will be issued by an insurance company acceptable to the Risk Management Division, or be provided through partial or total self-insurance likewise acceptable to the Risk Management Division.

G. Attorney agrees that the insurance required above shall be in effect at all times during the term of this contract. In the event said insurance coverage expires at any time or times during the term of this contract, Attorney agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the contract, or for a period of not less than one year. New certificates of insurance are subject to the approval of the Risk Management Division and Attorney agrees that no work or services shall be performed prior to the giving of such approval. In the event Attorney fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this contract upon the occurrence of such event.

H. The certificate of insurance must include the following provisions stating that:

1. The insurer will not cancel the insured's coverage without thirty (30) day prior written notice to the County; and
2. The County, its officers, officials, employees, and volunteers are included as additional insured, but only insofar as the operations under this contract are concerned. This provision shall apply to all liability policies except worker's compensation and professional liability insurance policies.

I. Attorney's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be excess of ATTORNEY'S insurance and shall not contribute with it.

J. Any deductibles or self-insured retentions must be declared to and approved by the County. At the option of the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees, and volunteers; or Attorney shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expense.

K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.

M. Attorney's obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this agreement.

N. In the event Attorney cannot provide an occurrence policy, Attorney shall provide insurance covering claims made as a result of performance of this contract for not less than three years following completion of performance of this agreement.

O. The certificate of insurance shall meet such additional standards as may be determined by the contracting County either independently or in consultation with the Risk Management Division, as essential for protection of the County.

13. **Ownership of Data.** Upon completion or earlier termination of all services under this Agreement, ownership and title to all reports, documents, maps, specifications, technical memoranda, estimates, compilations and any and all other materials produced as part of this Agreement will automatically be vested in County and no further agreement will be necessary to transfer ownership to County.

14. **Conflict of Interest.** Attorney shall immediately notify County if any services to be performed under this Agreement involves an actual or potential conflict of interest, financial or otherwise, under the California Rules of Professional Conduct. Attorney shall not engage in any activity under this Agreement that involves any actual or potential conflict of interest under such Rules unless Attorney first makes a full and complete disclosure of all relevant facts and obtains a written waiver of such conflict in advance from County.

15. **Indemnity.** To the fullest extent allowed by law, Attorney shall defend, indemnify, and hold harmless the County against and from any and all claims, suits, losses, damages, and liability for damages of every kind and description, including Attorney=s fees and costs, incurred, brought for or on account of: (1) injuries to or death of any person, including but not limited to workers, County employees, and the public, (2) damage to property, or (3) any economic or consequential losses, which are claimed to or in any way arise out of, directly or indirectly, or are connected with (a) any negligent act, whether passive or active, error or omission, or willful misconduct, of Attorney, its sub-consultants, agents officers or employees, (b) professional malpractice of Attorney, its sub-consultants, agents officers or employees, or (c) any breach of statutory, regulatory, contractual or legal duty of any kind related, directly or indirectly to the services, responsibilities or duties required of Attorney by this Agreement. This duty of Attorney to indemnify and save County harmless includes the duties to defend set forth in California Civil Code section 2778. Nothing herein is intended to deprive Attorney of the benefit of the application of the doctrine of comparative fault as it would otherwise be applicable to reduce Attorney=s liability as a result of the negligence or other misconduct of the County and any of its officers, employees, or agents, as determined by a court of law having jurisdiction.

**16. Default, Termination, and Cancellation.**

A. **Default:** Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (Time to Cure), then such party shall be in default. The Time to Cure may be extended in the discretion of the party giving notice. Any extension of Time to Cure must be in writing, prepared by the party in default for signature by the party giving notice, and must specify the reason(s) for the extension and the date in which the extension of Time to Cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the Time to Cure has expired.

B. **Bankruptcy:** This Agreement, at the option of County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Consultant.

C. **Ceasing Performance:** County may terminate this Agreement in the event Consultant ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.

D. **Termination or Cancellation without Cause:** County may terminate this Agreement in whole or in part upon seven (7) calendar days written notice by County for any reason. If such prior termination is effected, County will pay for satisfactory services rendered prior to the effective dates, as set forth in the Notice of Termination provided to Consultant, and for such other services which County may agree to in writing as necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination, Consultant shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the Notice directs otherwise. In the event of termination for default, County reserves the right to take over and complete the work by contract or by any other means.

**17. State Filing.** All independent consultants providing services to County must file a State of California Form 590 certifying their California residency or, in the case of a corporation, certifying that it has a permanent place of business in California. Attorney will be required to submit a Form 590 to the County, or the County shall instruct the paying agent to withhold seven percent (7%) of any payment to be made to Attorney related to this Agreement.

**18. Taxpayer Identification Number (Form W-9).** All independent contractors or corporations providing services to County must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

19. **Contract Administrator and Notice.** For the purpose of administering this Agreement, County shall be represented by its County Counsel, Louis B. Green.

20. **Venue.** Any dispute resolution action arising out of this Agreement, including but not limited to litigation, mediation or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California. Where allowed by law, Attorney waives any removal rights it may have under Code of Civil Procedure section 394.

21. **Notice to Parties.** All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office; postage prepaid and return receipt requested. Notices to County shall be in duplicate and addressed as follows:

County of El Dorado  
Office of the County Counsel  
330 Fair Lane  
Placerville, California 95667

Attn.: Louis B. Green, County Counsel

AND:

County of El Dorado County  
Department of Development Services  
2850 Fairlane Court  
Placerville, CA 95667

Attn.: Greg Fuz, Dir. of Development Services

or to such other location as County directs.

Notices to Attorney shall be addressed as follows:

Ebbin, Moser & Skaggs LLP  
550 Montgomery Street, Suite 900  
San Francisco, CA 94111


Attn.: Marc Ebbin

or to such other location as Attorney directs.

22. **Partial Invalidity.** If any provision of the Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

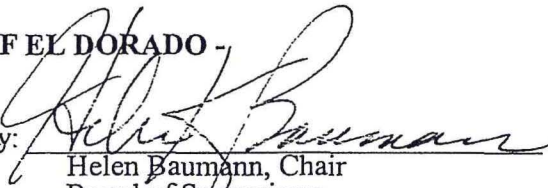
23. **Entire Agreement.** This Agreement and the exhibits thereto are the entire agreement between the parties and they supersede all prior written or oral agreements or understandings between the parties. This Agreement may only be modified by mutual consent of the parties in writing fully executed by duly authorized officers of the parties.

Department Concurrence:

  
Louis B. Green, County Counsel

- COUNTY OF EL DORADO -

Dated: 10/22/07

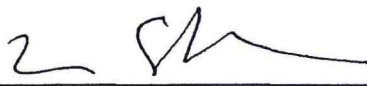
By:   
Helen Baumann, Chair  
Board of Supervisors  
"County"

ATTEST:

  
Cindy Keck, Clerk  
of the Board of Supervisors

- ATTORNEY -

Dated: 10/15/07

By:   
"Attorney"  
State Bar Number:

PFF:sd  
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Proposed Scope of Services

Throughout the process of developing a comprehensive conservation planning program, EMS would assist the County in a variety of ways, including through our engagement in the following tasks. We have included an estimate of costs that would be associated with our involvement in each category of activities over the course of approximately three years.

For the purpose of these budget estimates, I have assumed that I would personally attend meetings in the County at least on a bi-monthly basis, and participate in other meetings telephonically. As you know, it is difficult to fully anticipate the true nature and extent of these tasks and the level of effort that will ultimately be required to ensure an appropriate outcome. Consequently, the actual cost of providing these services may vary from these estimates. Nonetheless, EMS would make every effort to work within these parameters and to provide the County with early notice if it appeared that these estimates were likely to be exceeded.

- **Conservation Options.** EMS would advise and assist the County in devising options to address regulatory requirements under both state and federal endangered species laws (ESA, CESA, and NCCP), while accommodating other needs of the County. We would provide guidance, on both regulatory and strategic matters, to ensure that these options advance local interests and achieve regulatory compliance for public and private activities and projects. EMS would also assist the County in the preparation and negotiation of a Planning Agreement that would be entered into with the relevant state and federal wildlife agencies. (Approximately \$25-35,000)
- **Conservation Plan Development and Review.** We would assume responsibility for reviewing documentation prepared by your consultants to meet state and federal regulatory requirements. We would also review any NEPA/CEQA documentation necessary to support the conservation plans. Throughout the process, we would work to ensure that the products that result from this process are legally defensible and, to the extent possible, impervious to successful legal challenge. (\$25-30,000)
- **Agency Interaction.** We would interface with officials from the relevant state and federal agencies (local offices and headquarters) on matters relating to the development and implementation of a conservation plan. Through established relationships, we would work with these agencies to affect policies and practices that optimize the benefits to the County and local interests that should flow from a comprehensive planning program. In particular, we would help to shape a process that affords expeditious and efficient processing of permitting applications, maximizes regulatory coverage and assurances, utilizes market-based approaches to achieve desired conservation objectives, and fits in with the practices and needs of the County. (\$50-65,000)
- **Implementation Strategies.** We would help the County identify and execute strategies for the implementation of a conservation plan. Specifically, we would help design approaches to funding implementation activities, carrying out programs for preserve management and monitoring, biological and resources study and analysis, permit monitoring, and land acquisition and mitigation banking. EMS would also assist the County in the preparation and negotiation of an Implementing Agreement that would be entered into with the wildlife agencies. (\$50-60,000)

Project Staffing/Rate Schedule

I would oversee all matters in which our firm was involved on behalf of the County and would undertake most of the work, assisted by other members of the firm, as appropriate.

Our hourly rates are as follows:

Marc Ebbin	\$385
David Moser	\$385
Sean Skaggs	\$385
Shawn Zovod	\$365
Greg Ritter	\$365